

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

JAN 12 2004

UNITED STATES OF AMERICA for the  
use of KAUFMAN FIRE PROTECTIONS  
SYSTEMS, INC., a New Mexico corporation,

*Robert M. March*  
CLERK

Use Plaintiff,

v.

CIV-02-1091WPJRHS

GUARANTEE COMPANY OF NORTH  
AMERICA, USA, a Texas corporation and  
MENENDEZ-DONNELL & ASSOCIATES, INC.,  
a Texas corporation.

Defendants.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Findings of Fact**

1. Menendez-Donnell & Associates, Inc. contracted with the United States General Services Administration to install a wet sprinkler system for Chi Chil Tah Indian School, Dormitory Building No. 614.

2. In order to complete the contract, Menendez-Donnell & Associates, Inc. entered into a Teaming Agreement executed between Kaufman Fire Protection Systems, Inc. and Menendez-Donnell & Associates, Inc. on June 12, 2002.

3. The Teaming Agreement required among other things that Kaufman Protection Systems, Inc. and Menendez-Donnell &

Associates, Inc. would cooperate and assist each other in expediting and properly executing the work.

4. The Teaming Agreement specifically stated that the strategy of the teaming agreement was to shorten the administrative phase of the bid, to fast track the issuance of the award, and to complete installation of all three sites prior to school starting or late August, 2002.

5. Kaufman Fire Protection Systems, Inc. received a set of plans and specifications for the job.

6. Menendez-Donnell & Associates, Inc. received an offer of proposal to perform the job for the amount of \$49,524.00 from Kaufman Fire Protection Systems, Inc. dated July 2, 2002 where it required certain information from Menendez-Donnell & Associates, Inc. in order to "install before school starts".

7. Menendez-Donnell & Associates, Inc. accepted the Kaufman Fire Protection Systems, Inc. proposal on July 11, 2002, the acceptance dated time was of the essence.

8. A representative of Kaufman Fire Protection Systems, Inc. attended the pre-job conference directed describing the work to be completed and the date the school was to open.

9. The design drawings required to be submitted by Kaufman Fire Protection Systems, Inc. were not stamped and reviewed by a properly certified engineer.

10. Kaufman Fire Protection Systems, Inc. did not complete the installation of the fire suppression system for use by the school prior to August 12, 2002.

11. Kaufman Fire Protection Systems, Inc. did not submit properly reviewed design drawings and design specifications.

12. Menendez-Donnell & Associates, Inc. properly terminated Kaufman Fire Protection Systems, Inc. from the Teaming Agreement.

13. Cy Cooper Systems was retained to complete the unfinished work of Kaufman Fire Protection Systems, Inc.

14. Cy Cooper was paid \$40,222.49 to complete the work of Kaufman Fire Protection Systems, Inc.

15. Kaufman Fire was not paid for any of its work.

16. \$9,301.51 remains in the original contract.

#### **Conclusions of Law**

1. A Teaming Agreement was entered into between Kaufman Fire Protection Systems, Inc. and Menendez-Donnell & Associates, Inc.

2. The amount agreed to between the parties in the Teaming Agreement was \$49,524.00.

3. Menendez-Donnell & Associates, Inc. completed its obligations contained within the Teaming Agreement.

4. Kaufman Fire Protection Systems, Inc. breached its obligations contained in Teaming Agreement.

5. Menendez-Donnell & Associates, Inc. hired a replacement contractor to finish the work remaining after Kaufman Fire Protection Systems, Inc. breached its contract.


6. The cost to cover the breach was \$40,222.49.

7. Kaufman Fire Protection Systems, Inc. is owed the difference between the cost to cover the breach and the amount of the original contract which is \$9,301.51.

Respectfully submitted,

Dated: January 9, 2004


CALVERT MENICUCCI, P.C.



Michael F. Menicucci  
Attorneys for Defendants  
P.O. Drawer 6305  
Albuquerque, New Mexico 87197  
(505) 247-9100

I hereby certify that a true and Correct copy of the foregoing Pleading was mailed to the Following party on this 9<sup>th</sup> day of January, 2004:

Wayne E. Bingham  
Attorney for Plaintiff  
Bingham, Hurst, Apodaca, & Wile, P.C.  
3908 Carlisle Blvd. NE  
Albuquerque, New Mexico 87107-4504

A handwritten signature in black ink, appearing to read 'Michael F. Menicucci', written over a horizontal line.

Michael F. Menicucci, attorney for Defendants